

SUMMARY OF TREATY ONE FIRST NATION JOINT RESERVE LAND CODE FOR SANDY BAY OJIBWAY FIRST NATION

INTRODUCTION

The Treaty One First Nation Joint Reserve Land Code For Sandy Bay Ojibway First Nation (“Joint Reserve Land Code”) was drafted under the *Framework Agreement on First Nation Land Management* (Framework Agreement).

The purpose of the Joint Reserve Land Code is to set out the principles and rules that govern all aspects of management and law-making respecting Joint Reserve Land in accordance with the *Framework Agreement*, and the Governance and Management Agreement mentioned below.

The 7 Treaty One Member Nations (or Signatory Nations), after a lengthy and comprehensive land dispute involving the disposition of the Kapyong Barracks Lands (now referred to as “Naawi-Oodena” Joint Reserve lands), concluded a *Comprehensive Settlement Agreement* (August 2019) with Canada.

The ultimate intention of the Signatory Nations with respect to this land is to take steps to set apart the land as joint reserve land to be used and occupied by all 7 Signatory Nations.

One of the steps that must be completed to have this land set apart as joint reserve land for the Signatory Nations, as outlined in the *Comprehensive Settlement Agreement*, is to establish an agreement for the joint governance and management of the joint reserve land by the Signatory Nations. Thus, the 7 Signatory Nations signed off on the Governance and Management Agreement.

The control and management of the joint reserve lands will be in accordance with the Joint Reserve Land Code, the Framework Agreement and the Governance and Management Agreement.

Sandy Bay Ojibway First Nation is one of 4 Signatory Nations the other 3 are Peguis First Nation, Roseau River Anishinabe First Nation, and Sagkeeng First Nation, who do not have a land code in place. Each one of these Signatory Nations must approve of the joint reserve land code containing uniform provisions within it for management of the joint reserve land, as the Signatory Nations were advised by the Lands Advisory Board that they cannot manage the joint reserve lands by way of ‘one’ overall joint reserve land code for the joint reserve land.

As for the 3 Signatory Nations (Long Plain First Nation, Brokenhead Ojibway Nation and Swan Lake First Nation) that already have a land code in place,

amendments to those existing land codes will be made to adopt the same uniform joint reserve land code provisions for the joint reserve land so there is consistency for the management of the joint reserve land and for all law making respecting the joint reserve land.

It should be noted that the 4 Signatory Nations (Sandy Bay Ojibway First Nation, Roseau River Anishinabe Nation, Sagkeeng First Nation and Sandy Bay Ojibway First Nation) without a land code presently, will have to vote and approve of both (1) the joint reserve land code; and (2) the Individual Agreement.

The 3 Signatory Nations that have a land code and Individual Agreement in place, will be required to amend the existing land code to adopt the uniform provisions of the joint reserve land code as well as amending their Individual Agreements to add in the joint reserve lands. No formal ratification vote to amend the existing land codes or the Individual Agreements are needed.

The joint reserve land code will only apply to 'joint reserve' land of the 7 Signatory Nations and not to any other reserve land.

RATIFICATION

The Joint Reserve Land Code has been developed in consultation with the Signatory Nations Council, the lands manager and with the community. It does not come into force unless both the joint reserve land code and the Individual Agreement with Canada are ratified by the members of Sandy Bay Ojibway First Nation. If the Joint Reserve Land Code is approved, Sandy Bay Ojibway First Nation will participate in the management of the joint reserve lands along with the other 6 Treaty One members in accordance with the Joint Reserve Land Code, the Governance and Management Agreement and the Framework Agreement.

If the members ratify or vote to approve these two documents above, the joint reserve lands will not be managed by the Minister under the *Indian Act*, but instead would be managed by the 7 Signatory Nations. If the members vote and do not approve of the joint reserve land code and Individual Agreement, the joint reserve land will be managed by Indigenous Services Canada in accordance with the *Indian Act*.

What is the threshold to approve of the Joint Reserve Land Code and the Individual Agreement?

Under the Framework Agreement, the joint reserve land code and the Individual Agreement need community approval in accordance with the Framework Agreement and the Sandy Bay Ojibway First Nation Community Ratification Process document.

Every person who is a member of Sandy Bay Ojibway First Nation, whether resident on or off reserve, who is 18 years of age, is eligible to vote on whether to approve their First Nation's joint reserve land code and its Individual Agreement.

The joint reserve land code and the Individual Agreement will be considered approved by the community if a majority of participating eligible voters vote to approve them.

When does the Joint Reserve Land Code of Sandy Bay Ojibway First Nation come into force?

The *Joint Reserve Land Code* would take effect on the first day of the month following the certification of the *Joint Reserve Land Code* by the Verifier (after a successful ratification vote as noted above).

Ratification Vote or a **Community Input Meeting** is not required for:

- an amendment to the description of Land in this *Joint Reserve Land Code*;
- revisions to this *Joint Reserve Land Code* made pursuant to Section 30; and
- an amendment to, or renewal of, the Individual Agreement.

Substantive Amendments or Repeal - All other amendments to, or release and re-enactment of, this *Joint Reserve Land Code* must be approved by a quorum of five (5) of seven (7) members of the Governing Council after obtaining input by all the Signatory Nations Councils.

CONTENTS OF THE JOINT RESERVE LAND CODE

Eligible Reserve Lands - Only Land that is a 'joint reserve' of all Treaty One Signatory Nations is subject to be governed under the Joint Reserve Land Code and the Governance and Management Agreement.

Authority - Treaty One First Nations are signatories to Treaty One of 1871 with Her Majesty the Queen in Right of Great Britain ("Canada") in which Canada has been entrusted with holding title to the Joint Reserve lands for the benefit, use and occupation of the Treaty One First Nations collectively.

Description of Treaty One Joint Reserve Lands - The Lands that are subject to the Treaty One *Joint Reserve Land Code* are those lands more fully described in the Individual Agreement including:

Naawi-Oodena Joint Reserve Lands

Total Lands containing 109 acres (44.11 hectares) more or less.

Addition of Joint Reserve Land - If there are other lands that are to become 'joint reserve' land of the 7 Treaty One Nation members, this land can be added as joint reserve land under the *Joint Reserve Land Code*. The Governing Council would need to approve of the new additional land becoming joint reserve lands by way of a Special Governing Council Resolution. The Individual Agreement of each Signatory Nation will also need to be amended to include the new joint reserve land. The Governing Council shall decide when Community Input is required in accordance with this *Joint Reserve Land Code*.

Governance and Management Authority - The Governing Council, along with the Councils of all the Treaty One Signatory Nations having signed off on the Governance and Management Agreement declares that exclusive executive governing and supervisory authority of and over the joint reserve land is vested in Treaty One Nations in respect of the Governing Council and empowers the Governing Council, with the support and advice of the Knowledge Keepers Council and the Lands Technical Advisory Council, to govern, administer, manage and supervise the interests of the Treaty One Joint Reserve Lands.

Governing Council Resolutions and Decision Making - Unless delegated by the Governing Council in writing or as otherwise expressly required by the Joint Reserve Land Code or the Governance and Management Agreement, all decision-making responsibility in respect of joint reserve land remains under the authority of the Governing Council.

Decisions of the Governing Council must be approved, by either:

- (1) an Ordinary Governing Council Resolution which means a resolution:
 - (i) passed by the affirmative vote of a majority of the voting Governing Council members present or participating at a meeting of Governing Council duly called; or
 - (ii) by an instrument signed by all the Signatory Nations that make up the Governing Council; or

- (iii) a quorum for a meeting of the Governing Council shall be a minimum of 4 Governing Council members either present in person or participating by conference telephone or other electronic means.
- (2) a Special Governing Council Resolution, where expressly stated and required, means a resolution that:
- (i) is passed by an affirmative vote of not less than five of seven (5 of the 7) Signatory Nations that make up the Governing Council (or their Proxy Councillor) who vote on the resolution in person or by proxy at a duly convened meeting of the Governing Council; or
 - (ii) a written resolution in one or more counterparts consented to in writing by all of the Governing Council members (or their Proxy Councillor) that make up the Governing Council who are otherwise entitled to vote; and
 - (iii) that all 7 Governing Council members (or their Proxy Councillor representative), must be in attendance either in person, by telephone or other electronic means of communication including virtual participation methods, for any issue to be discussed that requires a decision of 5 of 7 Governing Council members (or their Proxy Councillor).
- (3) Unanimous Consent where expressly stated and required, means prior written unanimous consent of all 7 Governing Council members.

Governing Council May Make Laws - In accordance with the delegation of authority by the Council to the Governing Council, and the law-making powers set out in the Framework Agreement, the Governing Council can make Land Laws respecting the joint reserve land and all laws must be made in accordance with the *Joint Reserve Land Code* and the Governance and Management Agreement.

Public Access to Laws - Copies of final approved Land Laws and amendments to Land Laws shall be posted on the Treaty One Nation Inc. website and on the [Name First Nation] website and shall be provided to [Name First Nation] Members or other people upon request.

Community Input and Information Meeting - Prior to any Governing Council decision on the matters outlined below, each Lands Technical Advisory Council

lands manager must carry out a community information meeting for their specific Signatory First Nation, for the purposes of informing Members and/or seeking Community Input on the following matters respecting the Joint Reserve Land:

- expropriation of land;
- voluntary exchange of land;
- any other matter where a Governing Council Resolution or Land Law requires Community Input.

For greater certainty, a community vote or approval is not required at a Community Input Meeting.

Expropriation - The *Joint Reserve Land Code* allows the Governing Council to expropriate an Interest in or Licence in any joint reserve land if:

- an expropriation Land Law has been enacted in accordance with the Joint Reserve Land Code following approval by way of a Special Governing Council Resolution on the proposed expropriation Land Law;
- Governing Council with the assistance of the Lands Advisory Technical Council lands manager of Sandy Bay Ojibway First Nation held a Community Input Meeting; and
- all requirements regarding expropriation under the *Framework Agreement* and the expropriation Land Law have been met.

Voluntary Exchange of Land - Joint Reserve Land may only be exchanged for new land which will be set apart as Joint Reserve Land and which will be subject to this *Joint Reserve Land Code* as Land in Section 9, and in the Individual Agreement.

Financial Accountability - The Governing Council is accountable to the 7 Treaty One Nation members and each of their members for the management of moneys and the joint reserve land under the *Joint Reserve Land Code* and under the Governance and Management Agreement.

The Governing Council will, through the Treaty One Nation Inc., present to the Signatory Nations: the annual budgets; an annual audit of the financial statements; and the annual report to the Signatory Nations. Further, the Governing Council shall publish in a location that is publicly accessible by the Members an annual report on land matters that shall include:

- an annual review of Joint Reserve Lands and Natural Resources management;
- annual budget;

- a copy and explanation of the audit as it applies to Joint Reserve Lands and Natural Resources; and
- any other information as determined by the Governing Council or Lands Technical Advisory Council.

Conflict of Interest - There are rules for conflicts of interest that may arise in land management respecting the joint reserve land. These rules apply to:

- each member of the Governing Council;
- each Chief and each Councillor of a Signatory Nation;
- each member of the Dispute Resolution Panel;
- each person who is a member of a board, committee or other delegated body dealing with any matter that is related to the joint reserve land;

The basic rules are for the person to declare a conflict of interest where there is a direct conflict or even a perceived conflict of interest, to refrain from voting on the issue and to remove themselves from the proceedings.

Delegation of Authority by Governing Council - The Governing Council will delegate administrative and management authority for joint reserve lands and resources and any other duty of responsibility of the Governing Council under the *Joint Reserve Land Code* or a Land Law to the Treaty One Governance Secretariat, the Lands Technical Advisory Council, or a special operating agency, **except** the duty to make Land Laws or establish any fee, levy, rent, or royalty payable.

Lands Technical Advisory Council - A Lands Technical Advisory Council ("LTAC") must be established and a lands manager from each of the 7 Treaty One First Nations will be represented on the LTAC. Additionally, one Councillor from each of the 7 Treaty One First Nations will also sit on the LTAC as a representative of this Council.

What is the role of the LTAC? The role of the LTAC is to advise the Governing Council on land matters respecting the joint reserve land, review of draft land laws. Land management decisions are expected to be made by the Governing Council.

Authority to Make Land Dispositions - Subject to Sections 6, 7, 8, and 9 of the *Joint Reserve Land Code*, and any Treaty One Land Law, the Governing Council or any person or entity to whom the Governing Council has delegated

responsibility to, may grant, with or without conditions, Interests in, Licenses, or permits to use or mortgages in relation to Joint Reserve Lands, and such grants may include or exclude the use of Natural Resources.

Land Resolutions Required for Dispositions - No Interest in, Licence or Permit to use, or Mortgage of the joint reserve lands can be created, granted, disposed of, assigned or transferred unless this is done by a Governing Council Resolution, Administrative Order or where required, until a Community Input Meeting has occurred, in accordance with the *Joint Reserve Land Code* and any Treaty One Land Laws.

Registration of Interest and the Treaty One Land Registry - The Governing Council, under the Treaty One Nation Inc., may establish and maintain a Treaty One Land Registry in accordance with Treaty One Land Laws, which laws shall include without limitation to the form and content of the register, the process for, and effect of, registering documents in the registry, including payment of fees for registration, and the appointment, powers, duties and functions of officers or employees who will administer the Treaty One Land Registry. To be protected, interests in and licences to use joint reserve land must be registered in the First Nation Land Registry in Ottawa. All land instruments respecting the joint reserve land must be registered in the First Nation Land Registry in Ottawa in accordance with the provisions of the *Joint Reserve Land Code*.

Duplicate Register - The Council of Sandy Bay Ojibway First Nation may establish a Sandy Bay Ojibway First Nation Land Registry in accordance with a uniform Land Law which shall include, the form and content of the register, the process for, and effect of, registering documents in the registry, including priorities, payment of fees for registration, and the appointment, powers, duties and functions of officers or employees who will administer the Sandy Bay Ojibway First Nation Land Registry. However, the registration of joint reserve land instruments must be registered in the First Nation Land Registry in Ottawa even if a First Nation decides to establish their own registry.

Interests in Land - All interests in or licenses to use the joint reserve land by an individual or business will be made by the Governing Council which is made up of all 7 Chiefs of the Treaty One First Nations under the *Joint Reserve Land Code* and the Governance and Management Agreement. Under the *Joint Reserve Land Code*, Sandy Bay Ojibway First Nation Council delegates all management and law making authority to the Governing Council. Again, this management and law making authority that is delegated to the Governing Council is only for the joint reserve lands – not the reserve land of Sandy Bay Ojibway First Nation.

All Dispositions in Writing - Any interest in or licence to use Joint Reserve Land may only be created or granted, disposed of, assigned, or transferred by way of a written document in accordance with this *Joint Reserve Land Code* and the Governance and Management Agreement.

Interest Void if not registered - An Interest or Licence granted after the *Joint Reserve Land Code* comes into force is void unless it is registered in the First Nations Land Register, and where established, in the Treaty One Land Registry and Sandy Bay Ojibway Land Registry.

Existing Interests - Immediately upon the coming into force of the *Joint Reserve Land Code*, pursuant to the Individual Agreement, Canada transfers to Treaty One Signatory Nations all of the rights and obligations of Canada as grantor in respect of existing Interests and Licences in or in relation to the Joint Reserve Land.

Application of Land Laws - All Land Laws enacted pursuant to the *Joint Reserve Land Code* apply to all Interests or Licences in the Joint Reserve Land.

Mortgage of an Interest - A leasehold Interest is subject to a charge or mortgage, but charges or mortgages by Persons are of no effect without written consent of the Governing Council.

Non-Issuance of Certificates of Possession - The Governing Council will not be granting any certificate of possession interest on the Joint Reserve Land.

Right of Access and Residence - Who has a right of access to the joint reserve land? The following persons have a right of access to joint reserve Lands:

- a residential lessee and their invitees;
- a commercial lessee and their invitees;
- a Person granted a right of access under a permit;
- a Person who is authorized by a government body or any other public body, established by or under an enactment of the Treaty One Signatory Nations, Parliament, or the Province to establish, operate or administer a public service, to construct or operate a public institution or to conduct a

technical survey provided that the Person received written authorization from a quorum of (5) of (7) of the Governing Council; or

- a Person authorized in writing by a quorum of (5) of (7) of the Governing Council, Administrative Order of the Treaty One Nation Inc., by a By-Law or a Land Law.

Transfer of Interests - The following Persons are entitled to have their interest registered in the First Nations Lands Register and where established, in the Treaty One Land Registry and the Sandy Bay Ojibway First Nation Land Registry:

- a Person who receives an Interest under a will or estate;
- a Person who receives the remainder of a leasehold interest (Term) under a will or estate; and
- a Person who holds an Interest on behalf of a minor or a mentally incompetent person;

provided in all cases that Interest is acquired in accordance with applicable laws or a court order.

Further, a Land Law may establish required documents and procedures for the registration or disposition of an Interest arising from wills and estates, including estates of a minor or mentally incompetent person.

Natural Resources - What are natural resources under the joint reserve land code and do they form part of the joint reserve land? The natural resources are renewable and non-renewable natural resources such as: timber, minerals, stone, sand, gravel, clay, soil, and similar substances. The natural resources are considered a part of the land. The natural resources belong to the 7 Treaty One First Nations, including the revenues from those resources.

Dispute Resolution - The Governing Council will establish a body to resolve those disputes outlined in the Joint Reserve Land code, relating to the joint reserve land. Unless a Land Law provides otherwise, the Dispute Resolution process under the *Joint Reserve Land Code* applies to disagreements arising before or after this *Joint Reserve Land Code* came into effect regarding:

- decisions to grant or refuse to grant an Interest or Licence;

- rights under an Interest or Licence;
- disagreements over the boundaries of a lease, Interest or Licence;
- disputes over any other matter under this *Joint Reserve Land Code* that the Governing Council determines to be a dispute.

The Dispute Resolution process under the *Joint Reserve Land Code* does not apply to:

- administration or distribution of an estate;
- expropriation under this *Joint Reserve Land Code*; and
- enforcement, prosecution or convictions under a Land Law.

Community Input - when is community input required? Community Input is that process that the Governing Council may use to consult with, or obtain input, from members before making a decision with respect certain matters in the joint reserve land code, namely:

- expropriation of land;
- voluntary exchange of land;
- any other matter where a Governing Council Resolution or Land Law requires Community Input.

For greater certainty, a community vote or approval is not required at a Community Input Meeting.

Community Input Meetings may take place in a facility, over local radio, Facebook live, YouTube live, or Zoom or other acceptable virtual meeting platform.

Comments received at the Community Input Meeting will be summarized into a report for the Governing Council's review and consideration. Such report must be provided to the Governing Council within five (5) days of the Community Input Meeting.

Funding - The Land Code does not deal with funding. Canada will provide funding for Sandy Bay Ojibway First Nation to manage the joint reserve land under the Individual Agreement.

Enforcement - Any person who interferes with, hinders, or obstructs a police officer, employee, or an official appointed under a Land Law, in the performance of their powers, duties, or functions is guilty of an offence punishable on summary conviction.

An officer, director, employee or agent of an organization or corporation which commits an offence under the *Joint Reserve Land Code* may be convicted of that same offence whether the organization or corporation is convicted of the offence or not.

Any person who commits an offence under the *Joint Reserve Land Code* is liable upon conviction to:

- a) a fine of not more than five thousand dollars (\$5,000);
- b) imprisonment for a term up to six (6) months;
- c) both a fine and imprisonment; and
- d) disqualification from Governing Council, Council and any office or Board established by the Governing Council for a period of no longer than eight (8) years.